

Notice of Allowability

Application No.

10/802,392

Examiner

HERBERT J. LILLING

Applicant(s)

BARCLAY, WILLIAM R.

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to September 21, 2006.
2. ☒ The allowed claim(s) is/are 27-36.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

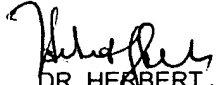
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date September 21, 2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


DR. HERBERT J. LILLING
PRIMARY EXAMINER
GROUP 1657 ART UNIT 1651

REASONS FOR ALLOWANCE

The following is an Examiner's Statement of Reasons for Allowance:

Any comments considered necessary by applicant must be submitted no later than the Payment of the Issue Fee and, to avoid processing delays, should preferably accompany the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

The instant specification states :All of the other strains of Mortierella that have been evaluated for arachidonic acid production belong to the Mortierella sections alpina, hygrophila or spinosa. It has now been recognized that strains of Mortierella sect. schmuckeri are particularly advantageous in the production of arachidonic acid compared to these other strains of Mortierella. In particular, it has been found that **strains of Mortierella sect. schmuckeri** are capable of producing arachidonic acid with high productivity.

The references do not teach a product containing at least 21.9% of the total fatty acid is of a biomass of the above specific strain **Mortierella sect. schmuckeri** as part of the claimed product which references include:

JP-AI-13-272692 which invention can use any microorganism capable of producing arachidonic acid, and capable, on addition of an alkene substrate, of producing novel highly unsaturated fatty acids that preserve the substrate's double bond. Such organisms include, for example, microorganisms **from the families** **Mortierella**, **Conidiobolus**, **Pythium**, **Phytophthora**, **Peuicillium**, **Cladosporium**, **Mucor**, **Fusarium**, **Aspergillus**, **Rhodotomla**, **Entomophthora**, **Echinozporangium** and **Saprolegnia**.

Examples from the Mortierella family include Mortierella elongata IFO 8570, Mortierella exigua IFO 8571, Mortierella hygrophila IFO 5941, and Mortierella alpina IFO 8568. All of these strains can be obtained without restriction from the Institute for Fermentation, Osaka. Further, Mortierella elongata SAM 0219 strain, which the present inventors isolated from soil (FERM P-g703)(FERM BP-1239), can also be used.

The reference **does not mention the instantly claimed species.**

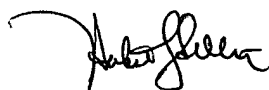
Reference no 4 JPAS6312290 : recites various microorganisms in this invention includes: *Mortierella alpina* (IFO 8568, ATCC 16266, . ATCC 42430), *Mortierella balnied* (IFO 8569), *Mortierella elongate* (IFO 8570), *Mortierella exigua* (IFO 8571), *Mortierella minutissima* (IFO 8573), *Mortierella verticillata* (IFO 8575), *Mortierella hygrophila* (IFO 5941), *Mortierella polycephala* (IFO 6335).

These **strains are not within the scope** of the instantly claimed species.
Thus, it was considered that all of the other references cited in the 1449 filed September 9, 2006 fail to meet all of the limitation for the instantly claimed inventions and thus the instant claims are allowable over the references of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is 571-272-0918 and Fax Number is **571-273-8300**. or SPE Jon Weber whose telephone number is 571-272-0925. Examiner can be reached Monday-Friday from about 7:30 A.M. to about 7:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.J.Lilling: HJL
(571) 272-0918
Art Unit **1657**
December 19, 2006



Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1657